

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GLENN STEINERT)	
Claimant)	
VS.)	
)	
KANSAS GAS SERVICE)	Docket No. 244,915
Respondent,)	
Self-Insured)	

ORDER

Respondent appealed the October 26, 2001 Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument on April 16, 2002.

APPEARANCES

James E. Martin of Overland Park, Kansas, appeared for claimant. Larry G. Karns of Topeka, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. Additionally, at oral argument before the Board, the parties agreed that claimant has a 16.5 percent functional impairment to the right upper extremity at the shoulder level, if the Board finds the accident compensable under the Workers Compensation Act.

ISSUES

This is a claim for a repetitive trauma injury to claimant's right upper extremity, including the shoulder. In the Application for Hearing that was filed with the Division of Workers Compensation in June 1999, claimant alleged a series of accidents from October 8, 1998, to January 26, 1999.

In the October 26, 2001 Award, Judge Clark determined claimant sustained a series of accidents to his right upper extremity and shoulder through January 6, 1999, when claimant last worked before having shoulder surgery. Accordingly, the Judge awarded

claimant permanent partial disability benefits for a 16.5 percent functional impairment to the right upper extremity and shoulder.

Respondent contends claimant failed to prove that he provided respondent with timely notice of the accident or injury. Respondent contends claimant did not provide notice that his injury was work-related until February 26, 1999. The company further argues that claimant did not have just cause, which would extend the time period for reporting the accidental injury from 10 days to 75 days following the date of accident. The company also argues claimant sustained a single, traumatic accident on October 12, 1998, rather than a series of repetitive traumas culminating on January 6, 1999, as determined by the Judge. Respondent requests the Board to deny claimant's request for benefits.

Conversely, claimant contends the greater weight of the medical evidence establishes that claimant tore his right rotator cuff in his shoulder from repetitive use and that he informed respondent of the accidental injury on January 8, 1999, which was immediately after he learned that he had a torn right rotator cuff rather than arthritis in his shoulder. Accordingly, claimant argues that he provided respondent with timely notice of the accidental injury. Claimant requests the Board to affirm the Award.

The only issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award should be affirmed.

The Board agrees with the Judge that it is more probably true than not claimant sustained a repetitive injury to his right upper extremity and shoulder through January 6, 1999, the last date that claimant worked before having right shoulder surgery by Dr. Michael Estivo later that month.

The conclusion that claimant's right upper extremity and shoulder injury occurred from a series of repetitive traumas rather than from a single traumatic event is supported by the onset of claimant's symptoms. The Board finds claimant's symptoms began with soreness in the right upper extremity that progressively worsened.

Although claimant told Dr. Philip Mills that his work required him to stick a long probing bar into the ground for finding gas leaks, claimant also told the doctor he did not really notice any shoulder pain until a couple of weeks later following a specific project. Additionally, Dr. Frederick Smith testified that claimant told him about pulling especially hard on the long bar on October 8, 1998, but claimant also noted he did not really develop any symptoms at that time. According to Dr. Smith, it would be unusual for someone to tear his or her rotator cuff in that manner. Further, claimant could not identify a specific event when his symptoms began and had to review respondent's records when he was initially requested to designate a date of accident. According to the medical evidence presented, had claimant torn his rotator cuff in a single, traumatic incident, more than likely he would have immediately experienced intense pain. Finally, the testimony from Dr. Edward Prostic established that repetitive trauma is a common mechanism for a rotator cuff tear.

The Board concludes that claimant provided respondent with timely notice of the right upper extremity and shoulder injury. In late December 1998, claimant began receiving medical treatment for his shoulder injury. Before undergoing an MRI in early January 1999 and before being advised otherwise, claimant reasonably believed that his right shoulder symptoms were caused by arthritis. On January 26, 1999, Dr. Estivo operated on claimant's right shoulder to repair the rotator cuff. It is undisputed that respondent knew in January 1999 that claimant's personal physician thought claimant had a torn rotator cuff. And it is also undisputed that before claimant underwent his January 5, 1999 MRI claimant initially told respondent that he did not believe his torn rotator cuff was work-related. While undergoing medical treatment, however, claimant learned from his doctors that his shoulder injury was more than likely caused by his work activities. After acquiring that knowledge, on February 26, 1999, claimant provided a written claim for workers compensation benefits to respondent.

The Board finds claimant had just cause for not reporting his injury to respondent as being related to his work until he learned of that relationship from conversations with his physicians while undergoing medical treatment. Accordingly, claimant had 75 days from the date of accident to provide notice to respondent that his accidental injury was related to his work.¹ The Board concludes claimant provided timely notice.

The Board adopts the findings and conclusions of the Judge that are not inconsistent with the above.

¹ See K.S.A. 44-520 (Furse 1993).

AWARD

WHEREFORE, the Board affirms the October 26, 2001 Award entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of May 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director